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Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of	)
	)
Distribution of Cable Royalty Fees	)
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	)

DIRECT CASE OF BROADCAST MUSIC, INC.

Broadcast Music, Inc. (BMI), by its attorneys, submits the following Direct Case in this proceeding pursuant to the rulings of the Tribunal made at the Conference of Claimants held on February 14, 1980 (44 Fed. Reg. 75201, Dec. 19, 1979).

BMI claims that 17% of the cable royalty fees collected for the Calendar Year 1978 should be paid to the "music claimant group," that is, BMI, ASCAP, SESAC and such other organizations as may purport to represent the composers and publishers of music. This claim is based on an analysis made of the music content of cable television distant signal transmissions by Dr. Richard F. Link of Richard F. Link & Associates, Inc., New York City. Dr. Link's analysis and a full statement of his position is annexed hereto as Attachment A. Dr. Link's biography and professional qualifications are annexed hereto as Attachment B.

In support of its claim, Broadcast Music, Inc. intends to offer three witnesses. It is estimated that one hour will be required for Dr. Link's testimony. Mr. Alan W. Smith, BMI Vice President, will be available for cross-examination in connection with BMI's music claim. A biographical statement of Mr. Smith is annexed hereto as Attachment C. Mr. Paul Rosenthal, BMI Manager of Clearance/Logging also will be available for cross-examination.

Respectfully submitted,

PEABODY, RIVLIN, LAMBERT & MEYERS

Washington Counsel

By: Charles T. Duncan
Charles T. Duncan, Esq.

Edward W. Chapin
Edward W. Chapin, Esq. by CTD
Counsel

Dated: March 24, 1980
Washington, D.C.

ATTACHMENT A

STATEMENT OF DR. RICHARD F. LINK

It was the purpose of the following analysis to determine the relationship, in terms of use, of music to the over-all distant signal universe of secondary transmissions by cable systems in the United States.

A sample of 144 U.S. cable systems was selected from Television Factbook, Services Volume (1979 Ed.) ("TV Factbook"). Of the 3,997 cable systems operating as of September 1, 1978 (TV Factbook, p. 465-a) it was believed that a sample size of 144 was appropriate because a judgment was made that such a sample size would produce results that reflected the realities of the cable industry. No formal estimate of sample accuracy was made before the fact, but my experience in sampling allowed me to make this judgment. The 144 systems were selected by a procedure that used a random starting point with a systematic selection afterwards. This method of sampling lists is quite common and variations of this method have been used by the IRS and many others. It should be noted that the TV Factbook data were organized by state and that this method of selection assured a broad geographic coverage.

The listing for each of the 144 systems was analyzed and the channel utilization of each, as set forth in TV Factbook, was tabulated. This tabulation consisted of the number

of channels in use and the nature of the usage. Channel usage was analyzed in terms of network, independent and local access television, automated signals with music and without music, and the carriage of radio signals.

Since we are here concerned with distant retransmissions, the channels were further analyzed to identify non-distant signals, which were excluded from the survey. The non-distant signals were determined by using Television Factbook, Stations Volume (1979 Ed.) and the coverage contour maps therein contained. If the cable retransmission was within the coverage area of a primary transmitter, it was treated as a "local" retransmission and was excluded from the study. Using the above method, 1,073 active channels (excluding service and pay TV channels) were analyzed. The following results were obtained:

Distant TV	745 channels
Automated with Music	169 channels
Automated without Music	10 channels
Non-Automated TV (local access, etc.)	62 channels
Radio	87 channels

The analysis of channel utilization did not offer any information on program content. However, it is reasonable to assume that the distant signals represented, by and

large, normal television programming. It was therefore necessary to analyze samples of such programming to determine the amount of music contained.

A detailed survey which I previously designed and analyzed to determine program music content was used. That survey was based upon the 1975-1976 television season and involved the FCC Composite Week for the period in question. In performing the survey, each day of the FCC Composite Week was itself expanded into a week, with the result that the program content of seven random weeks (49 days) was analyzed. Those weeks were as follows:

Sunday	6/06/76	--	6/13/76
Monday	8/04/75	--	8/10/75
Tuesday	1/19/76	--	1/25/76
Wednesday	4/12/76	--	4/18/76
Thursday	10/27/75	--	11/02/75
Friday	11/17/75	--	11/23/75
Saturday	3/01/76	--	3/07/76

A random sample of stations was analyzed. There were approximately 40 which were studied, and they were selected by virtue of the fact that they had fallen into BMI's normal TV logging sample. This is a random sample of TV stations chosen by Ernst & Whinney, independent auditors, in an ongoing system that forms the basis of BMI's payments to its affiliates for TV performances.

These stations were analyzed as to program content by using Station Program Logs, which had been supplied to

BMI by the stations in question and by the use of cue sheets, which BMI maintained independently. Some of the cue sheets indicated the actual length of each program element; others showed the occurrence only. A sufficiently broad sample of timed occurrences was available to permit a generalization with respect to those occurrences which were untimed. Eighty-six percent (86%) of the performances were timed and the average timing factor was applied to the 14% of performances that were untimed to reach a total time for music.

Approximately 2,400 local television program hours comprising 3,030 separate programs were thus reviewed and it was found, using the above methods that the use of music within these hours aggregated approximately 515 hours, or 21.5% of the total time.

Putting the results of the two surveys together, the following computation was made. If distant signal carriage represents 69% of the active channels surveyed (745/1073) and music is used within comparable or representative signals 21.7% of the time, then the weighted relationship of music to distant television programming is 15% (.69 x .217 = .15). This affords the basis for concluding that music constitutes 15% of distant cable television retransmissions.

No attempt was made to develop accurate percentages or weights for the music contained in the radio retransmission

portion of the cable product. However, experience indicates that music represents 90-95% of total radio time. On a non-scientific basis, and on the basis of my professional experience, I concluded that no reasonable weighting, by whatever methods used, could reduce the effective percentage of radio within cable retransmissions to less than 5%. However, although the 5% figure was obtained by a very conservative approach to the radio music usage, I adopted 2% as the percentage allocable to radio within cable distant signal retransmission to be even more conservative in our approach.

These two percentages -- 15% for television and 2% for estimated radio -- combine to produce a result that music contributes approximately 17% to the over-all distant cable signal retransmissions.

Respectfully submitted,

RICHARD F. LINK & ASSOCIATES, INC.

By: Richard F. Link
Richard F. Link By Charles F. Duncan

ATTACHMENT B

DR. RICHARD F. LINK

Dr. Link is the founder of the consulting firm of Richard F. Link & Associates, Inc. He has broad experience in the application of quantitative methods to the solutions of business and technical problems. He has applied statistical theory and practice to the fields of survey research, experimental design and data analysis. He has worked with various systems groups to formulate problems in a manner that left them amenable to the methods of systems analysis or operations research for their solutions. He has worked with computers for more than 25 years, in environments that were purely batch oriented, time sharing oriented, and fully communicated, multiprocessing and real time oriented.

In addition to his technical capability, his primary activities recently have been directed toward bridging the gap between managements' desire for the solution of their problems and the technical resources necessary to implement such solutions.

Partial Client List

Broadcast Music, Inc.
National Broadcasting Company (News Division)
Performing Rights Organization of Canada, Limited
Daily News (New York)
Princeton University
Opinion Research Corporation
Mathematica
Yankelovich, Skelly and White, Inc.

U.S. Bureau of Mines
Tektronix
Ramo Wooldridge
U.S. Air Force
Federal Trade Commission
Office of Science and Technology (Executive Office of the President)
Caplin and Drysdale
State University of New York at Stony Brook

Dr. Link is the co-author of three books and the co-editor of six books. He has over 30 technical publications in the field of applied and theoretical statistics. He maintains membership in the following professional societies:

Institute of Mathematical Statistics
American Statistical Association (Fellow)
Operations Research Society of America (Full member)
American Association for the Advancement of Science (Fellow)
American Association for Public Opinion Research

Education

B.S., Mathematics, University of Oregon
M.A., Mathematics, Princeton University
Ph.D., Mathematics, Princeton University

PUBLICATIONS

RICHARD F. LINK

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34. STASTICS BY EXAMPLE:

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WEIGHING CHANCES	Vol. II
DETECTING PATTERNS	Vol. III
FINDING MODELS	Vol. IV.

1973. Addison Wesley Publishing Co. (Editor with Mosteller, et al)

ATTACHMENT C

MR. ALAN SMITH

Mr. Smith is Vice President, Licensing, for Broadcast Music, Inc. (BMI). Mr. Smith joined BMI in May, 1976 as Director of Special Projects and, in that capacity, has worked on a variety of assignments including every major area within the company. Prior to joining BMI, he spent nearly 25 years with NBC as a television writer and producer, and, most recently, directed all NBC News Elections technical projects with major emphasis on electronic data processing. Mr. Smith spent 14 years with NBC's "Today" show as a writer and then Managing Editor and Associate Producer. He was also writer/producer of a number of television specials.

He is a member of the Broadcast Pioneers and the Society of Professional Journalists (Sigma Delta Chi).

Before The
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In the Matter of	)
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Distribution of Cable Royalty Fees	)
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REPLY MEMORANDUM OF BROADCAST MUSIC, INC.

Broadcast Music, Inc. (BMI), by its attorneys, submits this reply memorandum in the above-captioned proceeding. In the first round of comments, BMI addressed the four issues specifically set for comment by the Copyright Royalty Tribunal. 1/

In this memorandum, BMI confines its comments to a single matter -- the clear and specific requirement of the Copyright Act that authors and publishers of music receive due compensation for the public performance of their work. Two parties in this proceeding 2/, without support or explanation, challenge the claims made by the music licensing organizations on behalf of their affiliates and members. Ignoring fundamental principles underlying the Copyright Act in general, and Section 111 in particular, these parties claim that compensation by cable systems for performance of copyrighted musical works

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1/ 44 F.R. 59930 (October 17, 1979).

2/ Radio Station WGNA, Submission, November 14, 1979, p. 3, and National Association of Broadcasters, Memorandum, November 15, 1979, p. 29.

somehow results in a "double award." The argument is unsupportable and specious. In the long history of the Copyright Act, there has never been any suggestion that rights applicable to all other copyright owners were to be denied to the authors of musical compositions. There is simply no support for this "double award" theory in the Act itself or the underlying legislative history. To the contrary, the argument undermines the very concept of copyright since it would deny authors and publishers of musical compositions an interest in the public performance of their works.

I. Background

The copyright laws protect the "writings" of "authors." Under the 1976 Act, copyright protection subsists "in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced or otherwise communicated." Sec. 102(a). Assuming the requisite originality and proper fixation, the owner of copyright obtains a bundle of exclusive rights "to do and to authorize," including "in the case of . . . musical . . . works" the right "to perform the copyrighted work publicly . . ." Sec. 106(4).

The Copyright Act specifically recognizes "musical works, including any accompanying words," as protected works of authorship. Sec. 102(a)(2). It is recognized that, insofar as music is concerned, the right of public performance is of primary

value. The greatest source of revenues in the music industry derives from public performance rights. Shemel and Krasilovsky, This Business of Music, Billboard Publications, 4th ed., 1979, p. 157. Those rights, specifically guaranteed to the music copyright holder in Section 106 of the Copyright Act, are the lifeblood of the music composer and publisher.

BMI and the other performing rights organizations are organized to license public performance rights and collect performance royalties on behalf of their affiliates and members. While the performance right is among the most important for holders of music copyrights, it is difficult to enforce. Musical works are performed so extensively that it is virtually impossible for composers and publishers effectively to enforce their performance rights on an individual basis. See Nimmer on Copyright, Sec. 8.19.

The performing rights organizations, including BMI, are organized to license public performance rights and collect performance royalties on behalf of their members. BMI, as the transferee of its affiliates, obtains the rights to publicly perform, and to license others to perform, its affiliates' works. In the broadcasting industry, for example, BMI licenses the major television networks to perform works in its repertoire. In addition, local broadcasting stations obtain licenses to cover the performance of the copyrighted musical works in their locally originated programming. For this non-exclusive right, the local broadcasters pay a fee based on a percentage of their net revenues.

II. Section 111 Establishes a Compulsory License For the Retransmission of All Copyrighted Materials Including Musical Works

It is clear that authors and publishers are "copyright owners" and it is obvious that their musical "works" are "included" in the secondary transmissions of cable systems. The 1976 Copyright Act enumerates a number of limitations on the copyright owner's exclusive right to perform, among them the Section 111 compulsory license for cable television systems. Under this Section, the copyright owner of any work included in a distant, non-network secondary transmission 3/ is entitled to share in cable television royalties. Nimmer on Copyright, Sec. 8.18[E]. There is no suggestion either in the Statute or the legislative history that the Section recognizes only particular copyright owners but is blind to all others. Section 111(d)(4) provides for distribution of royalty payments to "copyright owners" whose "works" were "included" in a secondary transmission.

To argue that the Section is inapplicable to the music copyright denies not only the clear meaning of the Section, but also its legislative purpose. Congress recognized that "cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program

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3/ "Secondary transmission" is defined as "...the further transmitting of a primary transmission simultaneously with a primary transmission...". "Primary transmission" is defined as "a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service...". 17 U.S.C. Sec. 111(f).

material"; and that the retransmission of these copyrighted materials "is of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues." H. Rep. No. 94-1476, 90th Cong., 2d Sess., p. 90. In return for this beneficial use of copyrighted material, Congress established the royalty concept. Congress recognized that the retransmission of copyrighted musical works is an integral part of CATV operations and increases their revenues in precisely the same manner as the retransmission of other copyrighted works included in their programming. Early drafts of the general revisions in the bill went so far as to include a specific percentage of the royalty fees -- 15% -- for copyrighted musical works. See S.543, 91st Cong. 1st Sess. (1969), Sec. 111(d)(3)(c); S.644, 92nd Cong., 1st Sess. (1973), Sec. 111(d)(3)(c). While this provision was deleted ultimately to allow for a determination by the Tribunal of the appropriate share for music copyright owners, there is no suggestion in the legislative history that copyrighted musical works should be denied recognition. S.1361, 93rd Cong., 2nd Sess. (1973).

III. The Statute and Legislative History Indicate that Retransmission of Copyrighted Works by a Cable System Is a Performance Separate and in Addition to a Broadcasting Performance and Separate Compensation Must be Paid

Cable television is one of a number of technologies not contemplated by the 1909 Copyright Act. As these systems grew, they became an accepted entertainment and information source for

a vast number of subscribers throughout the nation. Copyright owners, including music interests, became concerned that their exclusive performing rights were devalued because this new medium was using copyrighted works without licensing or payment of compensation. Cable television operators took the position that they did not need to obtain a license to cover the copyrighted material because they were merely retransmitting the material broadcast by others. The copyright owners argued that cable television systems were infringing their copyrights by "performing" without a license the material contained in the broadcasts.

The United States Supreme Court first faced the question in Fortnightly Corp. v. United Artists, 392 U.S. 390 (1968), where it held that the functions of a cable television system did not constitute a "performance" within the meaning of Sections 1(C) and 1(D) of the 1909 Act then in force.

The Court faced the question again in Teleprompter Corp. v. CBS, 415 U.S. 394 (1974). This case presented a new element. The copyright holders argued that changes in the operations of cable systems, from the carriage of strictly local signals to the importation of distant signals, moved cable retransmission to performance status.

The Supreme Court held, notwithstanding, that "reception and rechanneling of these signals for simultaneous viewing is essentially a viewer function, irrespective of the distance between

the broadcasting station and the ultimate viewer." Teleprompter Corp. v. CBS, Id. at 407.

These cases were heard and decided while legislative proposals addressing the cable--copyright controversy were pending. The problem had been before Congress since 1965. In its Supplementary Report on the earliest proposals, the Register of Copyrights recognized the issues raised by the performance controversy -- the same concerns Congress was to address finally over a decade later:

> ...we believe that what community antenna operators are doing represents a performance to the public of the copyright owner's work. We believe not only that the performance results in a profit which in fairness the copyright owner should share, but also that, unless compensated, the performance can have damaging effects upon the value of the copyright. For these reasons, we have not included an exemption for commercial community antenna systems in the bill. 4/

The 1965 proposals died in committee. At the time the Court considered Fortnightly, a revision bill passed by the House and one introduced in the Senate were under consideration in the Senate Subcommittee on Patents, Trademarks and Copyrights. 5/ These proposals also failed adoption. When the Court considered Teleprompter, still later attempts at revision were pending. 6/

4/ Second Supplementary Report of the Register of Copyrights on The General Revision of the U. S. Copyright Law: 1975 Revision Bill, Chapter V, p. 4.

5/ H.R. 2512, 90th Cong., 1st Sess. (1967); S. 597, 90th Cong., 1st Sess. (1967).

6/ S. 1361, 93rd Cong., 1st sess. (1973); H.R. 8186, 93rd Cong., 1st Sess. (1973).

Recognizing the long history of controversy and the need for a careful balancing of interests, the Court in both Fortnightly and Teleprompter left resolution of the controversy to Congress.

Congress accepted the invitation to act two years after Teleprompter. In the 1976 general revision, Congress established clearly the principle that cable retransmissions are public performances for which compensation must be paid. It is obvious that the concept of "secondary transmission" describes the activities which the Court in Fortnightly and Teleprompter found did not constitute "performance." As the legislative history clearly indicates, it was the Congressional purpose to modify these cases and make cable retransmission subject to copyright liability. See H. Rep. No. 94-1476, 90th Cong., 2d Sess. pp. 88-89.

The revised Act clearly contemplated additional royalty payment for the additional performance. The report of the House Judiciary Committee, for example, stated:

> ...a singer is performing when he or she sings a song; a broadcasting network is performing when it transmits his or her performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers...

H. Rep. No. 94-1476, 90th Cong., 2d Sess., p. 63. 7/

7/ Cf. Remarks of Rep. Danielson, reporting out the bill which became the Copyright Act, referred to secondary transmissions as "something extra [which] could be considered as a 'performance,' or as an alternative to a performance." 122 Cong. Rec., H10,904 (daily ed. September 22, 1976) (remarks of Rep. Danielson).

Thus Congress rejected the position taken by the cable industry in Fortnightly and Teleprompter that retransmission is not a separate performance for which compensation is required. Instead, Congress established the principle that public performance rights may be licensed to broadcast stations and to cable systems for separate royalty payment.

The "double award" argument ignores completely the Congressional purpose and the statutory concept thus established.

BMI's licensing agreements with broadcast stations are consistent with the legislative scheme. 8/ The rights obtained by a broadcast station under these contracts are necessarily limited to the area where the station broadcasts. The compensation called for by the agreements covers only performances of copyrighted musical works within the limited geographical scope of the station's broadcast operations. Section 111 is directed to licensing of and compensation for the retransmission of distant, non-network signals, i.e., the retransmission of copyrighted musical works beyond the local broadcast area. The blanket licensing agreements do not include royalty payments for the distant retransmission.

8/ "Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing Licensee to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any television broadcast to perform publicly or reproduce the same for profit, by any means, method or process whatsoever." Broadcast Music, Inc. Local Station Television License Agreement, Paragraph 1C.

IV. The Double Award Argument Was Rejected by Congress At Least Insofar As Distant, Non-Network Signals Are Concerned

The "double award" argument is not new. Cable interests originally raised it in the debate preceding adoption of the revised Copyright Act. See "CATV and Copyright Liability," 80 Harv. L. Rev. 1514, 1522-1525 (1967). It was argued that cable television provided a broadcast station with a greater audience, thereby increasing advertising revenues. Although the parties who raised the "double award" argument in this proceeding do not explain their position, it is assumed that their argument is that since broadcast music license fees are based on a percentage of revenues, such revenues, together with a cable royalty payment, constitute a "double award."

While the revision proposals were being considered, however, there was evidence that double awards were not likely to result from cable retransmission of distant signals containing programs supported by local or regional sponsors. Copyright owners and broadcasters testified that the cost per thousand rate which advertisers pay on the basis of audience size applied only to the station's area of dominant influence and that a much lower return was expected from retransmission to distant audiences. 9/ In addition, a Federal Communications Commission

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9/ See Hearings on H.R. 2223 Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 94th Cong., 1st Sess., pp. 711-712, 743-752. See generally, Meyer, "The Feat of Houdini or How the New Act Disentangles the CATV-Copyright Knot", 22 N.Y.L. Sch. Rev., 545, 547 (1977).

study released January 20, 1976, concluded that any increase in advertising revenues by virtue of cable retransmissions would be insignificant. The study indicated that local and regional advertisers would not pay the broadcast station for audiences outside of their target area for distribution of their products. 10/ It is apparent that if the broadcasters' "double award" argument were valid, it would be equally applicable against them: broadcasters would receive double compensation for their own copyright claims if they are already compensated through additional revenues.

V. Compilation and Exclusive Licensing Arguments Do Not Affect the Retransmission Royalty Claims Filed by Performing Rights Organizations

Broadcasting interests challenging music interests make the additional argument that the broadcasters' compilation claim for the broadcast day overrides and invalidates all other copyright claims for retransmission royalties, including those of the performing rights organizations. This argument blatantly ignores the Statute. As we pointed out in our initial memorandum, even to the extent the Tribunal might recognize a compilation claim, Section 103(b) of the Act limits copyright protection in a compilation to the added material contributed by the author of the compilation as distinguished from the preexisting work. Moreover, the copyright in a compilation does not in any way affect copyright protection in the original work. A valid

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10/ 57 FCC 2d 625, 640-641 (1976).

compilation claim in no way overrides claims for performance of underlying copyrighted works.

Broadcasters also argue that performing rights organizations and program syndicators have transferred their performance rights to the broadcasters and that, therefore, their cable retransmission claims are invalid. We pointed out in our initial comments that, under the Copyright Act, ownership may be transferred in whole or in part by exclusive license. See Sec. 201(d)(1), and Sec. 101, definition of "transfer of copyright ownership." Whatever the application of those sections to syndicated programs licensed on an exclusive basis -- and we believe any copyright interest obtained by broadcast stations from program syndicators is subject to geographical limitations contained in the exclusive licensing agreements -- BMI licenses performance of musical works on a strictly non-exclusive basis and no copyright interest is transferred.

VI. Conclusion

The "double award" argument completely ignores the Congressional purpose of the revised Act and its legislative scheme. Congress has determined that retransmission by cable television systems is a public performance separate from and in addition to the performance of the work by broadcast stations. It has found that cable systems enhance the value of their service through performance of copyrighted works and, thus, should be required to compensate the copyright owner for the

privilege of use. There is no question that musical "works" are among those "included" in secondary retransmissions within the terms of Section 111 of the Copyright Act; and that the royalty claims of BMI and the other performing rights organizations are properly before this Tribunal. The challenge to the claim is baseless and should be rejected.

Respectfully submitted,

PEABODY, RIVLIN, LAMBERT & MEYERS

Washington Counsel

By Charles T. Duncan
Charles T. Duncan, Esq.

Edward W. Chapin per CTD
Edward W. Chapin, Esq.
Counsel

Dated: November 28, 1979
Washington, D.C.

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the matter of	)
	)
Distribution of Cable	)
Royalty Fees	)

PREHEARING MEMORANDUM OF THE JOINT SPORTS CLAIMANTS

Major League Baseball, the National Basketball Association, the National Hockey League and the North American Soccer League ("Joint Sports Claimants"), by their attorneys, submit this prehearing memorandum and accompanying studies, witness statements and exhibits on behalf of their 89 member clubs. As discussed below, this material establishes the entitlement of the Joint Sports Claimants to no less than 25% of the 1978 royalties paid by cable television systems pursuant to Section 111 of the Copyright Revision Act, 17 U.S.C. § 111.

I. INTRODUCTION AND SUMMARY

In view of the unwillingness of some of the claimants to reach an agreement, the Copyright Royalty Tribunal must now ascertain how the cable royalties should be distributed among the various claimants.

In the initial phase of these proceedings the Copyright Royalty Tribunal will determine the respective shares which generic groups of claimants merit. There are, of course, three such groups which encompass among them all compensable distant television station programming -- sports interests, broadcasters and movie-syndicators. The Joint Sports Claimants believe that the Tribunal should first determine the respective shares of these major groups; then it should ascertain the respective portions of those shares to which the three sub-claimants -- Public Broadcasting Service (PBS), copyright owners of cartoon characters and the performing rights societies (ASCAP, BMI and SESAC) -- are entitled.

PBS's programming will either be syndicated shows, which are a subset of the motion picture share, or locally-produced programming, which comes within the broadcasters' share. The copyright owners of cartoon characters, to the extent they have a separate claim, will be subclaimants primarily of the movie-syndicators' share and perhaps the broadcasters' share. The claims of music licensing societies constitute a portion of the programming claimed by the movie-syndicators and, to a lesser degree, the broadcasters.

However, none of these sub-claimants is entitled to a portion of sports' share of the pool.

The purpose of this memorandum is twofold. First, it discusses the criteria which the Tribunal should utilize in determining how to divide the royalty pool among the three major claimant groups. The Joint Sports Claimants strongly believe that the Tribunal must, after evaluating all of the evidence, allocate the funds in a manner which best approximates marketplace realities. In making this judgment, the Tribunal should, as in the marketplace, consider the comparative value of the three forms of distant signal programming both from the standpoint of the "buyer" (in this case, the cable operator) and the "seller" (in this case, the copyright owner).

Second, the memorandum summarizes the various studies, witness statements and exhibits presented by the Joint Sports Claimants. This evidence establishes that if the cable industry had been required to bargain in the marketplace for its distant signal programming, the sports interests would have received some 25-30% of each dollar spent on this programming; broadcasters would have received but a token payment, possibly 2% and certainly no more than 5%; and the movie-syndicators would have received the remainder.

These shares are predicated on a starting point which assumes that claims have been filed for all programming. The fact is, however, that while proper claims have been filed for virtually all of the sports programming, much of the other programming has not been claimed. Initial estimates show, for example, that less than 50% of the broadcasters have filed claims for their local programming and that royalties for only 50% to 70% of the distant signal movies and syndicated programming have been claimed.*/ In making its marketplace judgment, the Tribunal must consider

*/ Section 111(f) of the Copyright Act requires cable operators to pay a special royalty fee for "substituted live programming," such as live professional sports telecasts. For example, Section 76.61(b)(2) of the FCC's Rules, 47 C.F.R. 76.61(b)(2), permits cable systems to delete any distant signal program which is "primarily of local interest to the distant community (e.g., local news or public affairs program)," and to substitute a program of any other broadcast station. Congress noted in the House Report accompanying the Copyright Act that:

> "Should disputes arise . . . between the different classes of copyright claimants, the Committee believes that the Copyright Royalty Commission should consider that with respect to the copyright owners of 'live' programs identified by the special statements of account deposited under Section 111(d)(2)(A), a special payment is provided in Section 111(f)." H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 97-98 (1976)("House Report").

These special payments are included within the royalty pool which the Tribunal must allocate.

the value of only that qualifying programming for which a proper claim has been filed, and not all possible programming.

II. DISCUSSION

A. The Tribunal Must Allocate The Cable Royalty Pool in a Manner Which Best Approximates Marketplace Realities.

As the Tribunal is aware, Congress did not provide it with specific guidance concerning distribution criteria, but instructed it to "consider all pertinent data and considerations presented by the claimants." House Report at 97. In determining what is "pertinent," the Tribunal must, however, be guided by Congress' conclusion that cable systems are required to pay royalties because

> "the retransmission of distant non-network programming causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such retransmission adversely affects the ability of the copyright owner to exploit the work in the distant market. It is also of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues." House Report at 90.

Congress recognized, in other words, the relationship between cable royalty payments and the value of the copyright owner's program to the cable operator (in the language

of the House Report, the "benefit" of this programming "in attracting subscribers and increasing revenues"). It also recognized the relationship between these royalties and the value which the copyright owners would place upon the programming that the cable operator sought to import (again, in the language of the House Report, the "damage to the copyright owner by distributing the program beyond the area in which it had been licensed").*/ Quite clearly, therefore, the considerations which prompted Congress to require cable royalty payments for distant signal programming are market-place concerns which relate to the value of that programming.

There is simply no scientific formula that can assign shares of the royalty pool in a manner which takes account of the considerations which Congress thought important. To the contrary, the Tribunal must evaluate all of the evidence submitted by the claimants and then apply its expert

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*/ The need to consider the impact of cable importation upon sports in the royalty distribution process was underscored by the staff of the House Subcommittee on Communications. In its report entitled "Cable Television: Promise Versus Regulatory Performance" at 50 n. 46 (1976), the staff stated: "[T]he distribution of copyright payments . . . would have to take into account both the loss to the national or regional sports telecaster and the loss suffered by the local entrepreneur."

judgment to allocate the funds in a manner which best approximates marketplace realities. In this sense, the Tribunal must act as a surrogate for the marketplace, and determine how the cable industry would have allocated its royalty dollars if it had been required to bargain for that programming for which proper claims have been filed.

Throughout these proceedings the National Association of Broadcasters (NAB) and others have advanced the notion that the Tribunal's role should be reduced to nothing more than the counting of hours during which programs have been televised. */ That position is understandable coming from

*/ It is interesting to note that a number of broadcaster-claimants, recognizing the need for the Tribunal's making a marketplace judgment, apparently do not agree with the notion advanced by the trade association which purports to represent them. For example, the licensee of Stations KFDM-TV (Beaumont, Texas) and WFAA-TV (Dallas, Texas) has justified its claim for royalties solely on the basis of the "relative popularity of [KFDM-TV and WFAA-TV] copyrighted programs in relation to the copyrighted programs of other stations carried as secondary transmissions by royalty-paying cable systems." See Claim Nos. 1 and 2 (filed July 9, 1979). Similarly, Station KOAM-TV (Pitsburg, Kansas) has attempted to justify its claim on the basis of the audience which its local programming has attracted. See Claim No. 3 (filed July 10, 1979).

the broadcasters, because only such an approach -- one which ignores the marketplace and, therefore, considerations of economic value -- can produce for the broadcasters more than the token payment which they deserve. Indeed, as noted below, the evidence which the Joint Sports Claimants are submitting convincingly demonstrates that cable operators -- those who pay the royalties for which the parties are contending -- place virtually no value on the distant signal programming product of the local broadcaster.

If Congress had intended the distribution process to be as simplistic and mechanical as that urged by the NAB, there would have been no need to entrust this responsibility to the Tribunal. But rather than prescribe a precise formula and require its rote application, Congress recognized that distribution should be left to an expert body which could study the "pertinent data" and weigh the "considerations presented by the claimants." Further, it underscored the relationship between royalty payments and the marketplace concerns of value both to the buyer and seller. Congress has, in short, carved out a role for the Tribunal far more central and difficult than the NAB's theory would allow.

Operating within the guidelines set by Congress, the Tribunal must make a judgment as to how the marketplace, if functioning in the typical buyer-seller framework, would allocate the royalty pool.

B. Based Upon Marketplace Considerations the Sports Interests Are Entitled to Between 25%-30% of the Royalty Pool; Broadcasters Are Entitled to No More Than a Token Payment, Perhaps 2% And Certainly Less Than 5%; And the Movie-Syndicators Are Entitled to the Remainder.

Accompanying this prehearing memorandum are the following studies, witness statements and exhibits:

1. A report prepared by the advertising agency of Batten, Barton, Durstine & Osborn, Inc., entitled "Cable System Operators' Attitudes Toward Distant Signal Programming";

2. A report prepared by the communications research firm of Kalba Bowen Associates, Inc., entitled "The Comparative Value of Non-Network Distant Signal Sports Programming on Cable Television";

3. A report of the A.C. Nielsen Company, the audience ratings service, concerning cable viewing of distant signal non-network programming;

4. Various material contained in the files of the Federal Communications Commission and a request that the Tribunal take official notice of this material;

5. The statement of Robert Schultz, President of the cable research firm of VideoProbeIndex;

6. The statement of Bowie K. Kuhn, Commissioner of Baseball, and the Directors of Broadcasting of the National Basketball Association (George Faust); National Hockey League (Joel Nixon); and the North American Soccer League (Ron Bain);

7. The statement of David J. Stern of the National Basketball Association.

The above studies, witness statements and exhibits relate to the issue of marketplace value of distant signal sports and other programming. Specifically, they provide evidence with respect to: (1) the relative importance which cable operators place upon the three categories of distant signal non-network programming -- sports programming, movies and syndicated programming, and local programming; and (2) the impact which distant signal carriage has upon the ability of copyright owners to market their product.

1. The Buyer's Viewpoint -- Cable Operators Value Most Highly Distant Signal Sports Programming and Place Virtually No Value on Distant Signal Local Programming.

The comparative value which cable operators place upon the categories of distant signal programming -- and the critical importance which they attach to sports programming in particular -- is perhaps most dramatically

illustrated in the study undertaken by Batten, Barton, Durstine & Osborne, Inc. ("BBDO"), one of the nation's most respected advertising agencies. At the request of the Joint Sports Claimants, BBDO designed and administered a survey to gauge the attitudes of the nation's largest cable operators, representing over 40% of the cable subscribers in the United States. When asked by BBDO how they would divide a specific sum to purchase live professional sports, movies, syndicated TV shows and local news and public affairs, these cable operators responded that their program dollars would be divided as follows:

Live Professional Sports	27%
Movies	66%
Syndicated TV Shows	5%
Local News and Public Affairs	2%

Significantly, more than 80% of the respondents stated that they would spend between 20% - 50% of each dollar for distant sports programming, while nearly 80% concluded that they would spend nothing to obtain distant signal local programming.

The results of the BBDO study are fully confirmed in the report prepared by Kalba Bowen Associates, Inc., a communications research firm with considerable experience

in the field of cable television. At the request of the Joint Sports Claimants, Kalba Bowen undertook, designed, supervised and analyzed a vast amount of research on the comparative values of distant signal programming. Based upon this research, Kalba Bowen concluded that the results of the BBDO Study reflected a fair, objective assessment of the manner in which the cable industry would be willing to allocate its distant signal dollars. As Kalba Bowen found, distant signal sports programming has a value to cable operators which is substantially greater than either its proportionate share of total hours broadcast or total audience; distant signal local programming has a value which is substantially less than either its proportionate share of time or audience; distant signal movies and syndicated programming combined have a value somewhat less than their proportionate share of time and audience.

In reaching their conclusions, Kalba Bowen looked to a number of factors which reflect the significant value of sports programming to cable operators, all of which are succinctly set forth in the Executive Summary of their Report. In particular, however, Kalba Bowen rely upon

certain material which will be particularly helpful to the Tribunal in assessing this value, and which is therefore included separately in the submission of the Joint Sports Claimants. This material includes --

-- A number of official documents in the files of the FCC, of which the Tribunal is asked to take judicial notice. As these documents illustrate, cable operators have repeatedly represented to the FCC that distant signal sports programming is critically important to their ability to attract and to retain subscribers.

-- An independent study concerning cable subscribers attitudes which was conducted in 1978 by the cable research firm of VideoProbeIndex (VPI). According to this study, twice as many households were motivated to subscribe to basic cable because of distant signal sports offerings than because of distant signal movies; a statistically insignificant number of households subscribed to cable because of a desire to view locally produced programming on the distant signals.

-- A study of distant signal cable viewing prepared by the nation's leading audience rating service, the A.C. Nielsen Company. According to the A.C. Nielsen study, sports programming is the most popular form of distant signal programming, commanding an average quarter hour audience which is twice as great as that of movies and syndicated programming, and four times as great as that of local programming.

Sports programming is unique among all programming fare; it is live, current, ephemeral and non-repetitive; it generates intense viewer loyalty. Because of these qualities, sports programming has always been considered a most valuable commodity to conventional broadcasters. As established in the evidence submitted by the Joint Sports Claimants, sports programming is most valuable to cable operators as well.

2. Seller's Viewpoint -- Because of the Adverse Impact of Distant Signal Importation on their Traditional Marketing Practices the Professional Sports Interests Would Demand a Premium Payment from Cable Operators.

The Joint Sports Claimants are also submitting the statements of representatives of each of their leagues. These statements explain the telecasting patterns of the professional sports clubs and identify the over 200 stations which broadcast their clubs' games. In addition, these statements describe the perspective from which the sports interests would approach marketplace negotiations with cable operators.

As described more fully in the statement of Bowie K. Kuhn, the Commissioner of Baseball, and David J. Stern of

the National Basketball Association, the professional sports interests have consistently taken the position that cable retransmission of their programming into any club's home territory can have a significant adverse impact on the very determinant of that club's economic success -- the following of its home town fans, the size of its gate, and the value of its broadcast rights. */ This, in turn, affects the competitive stability of the entire league.

If they had been permitted to negotiate with cable systems concerning the retransmission of their telecasts, the sports clubs would have taken these severe economic consequences into consideration. And the price

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*/ This very point was recognized by Congress during its consideration of the Copyright Act. For example, the Subcomm. on Patents, Trademarks and Copyrights of the Senate Judiciary Comm., in its "Draft Report to Accompany S. 543", 91st Cong., 1st Sess., at 29 stated:

> "Unrestricted secondary transmissions by CATV of professional sporting events could seriously injure the property rights of professional sporting leagues in televising their live sports broadcasts. Unregulated retransmission of live sports events could also have serious consequences on gate attendance, such as major and minor league baseball games."

that they would have demanded at the bargaining table would have been significantly influenced by their consideration. The clubs would, in short, have demanded a premium for their product to ensure fair compensation for the impact that cable has on their traditional marketing practices.

III. CONCLUSION

In sum, the Joint Sports Claimants urge three points:

First, based upon marketplace considerations, the entire royalty pool should be allocated among the three major components of programming: sports interests are entitled to a share of between 25%-30% of the royalty pool; broadcasters are entitled to no more than a token payment, possibly 2% and certainly less than 5%; and movie-syndicators are entitled to the remainder. Such an allocation -- predicated on the arguendo assumption that claims for all distant signal programming have been perfected -- is fully supported by the studies, witness statements and exhibits accompanying this memorandum.

Second, sports telecasts do not use PBS programming, cartoon characters or music. Consequently, any royalties to

which the sub-claimants of these works are entitled should be taken from the broadcasters' and syndicators' portions of the royalty pool.

Third, any final allocation must also take into account the large numbers of syndicators and broadcasters who did not file claims. The role of the Tribunal is to ascertain the marketplace value, not of all televised programming, but only of that qualifying programming for which a proper claim has been filed. In addition, any final allocation must take into account the special payment for substituted live programming set forth in Section 111(f) of the Copyright Act.

Respectfully submitted,

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March 24, 1980

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the matter of	)
	)
Distribution of Cable	)
Royalty Fees	)

WITNESS STATEMENTS OF REPRESENTATIVES OF MAJOR LEAGUE BASEBALL, NATIONAL BASKETBALL ASSOCIATION, NATIONAL HOCKEY LEAGUE, AND NORTH AMERICAN SOCCER LEAGUE

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March 24, 1980

LIST OF WITNESS STATEMENTS

1. STATEMENT OF BOWIE K. KUHN,
   COMMISSIONER OF BASEBALL

2. STATEMENT OF GEORGE FAUST,
   DIRECTOR OF BROADCASTING AND SCHEDULING,
   NATIONAL BASKETBALL ASSOCIATION

3. STATEMENT OF JOEL NIXON,
   DIRECTOR OF BROADCASTING,
   NATIONAL HOCKEY LEAGUE

4. STATEMENT OF RON BAIN,
   DIRECTOR OF BROADCASTING,
   NORTH AMERICAN SOCCER LEAGUE

STATEMENT OF BOWIE K. KUHN,
COMMISSIONER OF BASEBALL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the matter of	)
	)
Distribution of Cable	)
Royalty Fees	)

STATEMENT OF BOWIE K. KUHN,
COMMISSIONER OF BASEBALL

1. My name is Bowie K. Kuhn. I have been the Commissioner of Baseball since 1969. Prior to that time I served as Counsel to the National League. My statement in this proceeding is made on behalf of all 26 Major League Baseball clubs, which have filed under Section 111 of the Copyright Revision Act of 1976, for royalty fees paid by cable systems for distant signal retransmission of Major League Baseball telecasts in 1978. These clubs are listed in Exhibit No. 1 hereto.

I. Baseball's Telecasting Patterns

2. Major League Baseball clubs license television rights at two levels. In accordance with the provisions of the Sports Broadcast Act of 1961, the clubs pool a portion of their rights and, through the Commissioner's Office,

license these rights to the national television networks. This has resulted in the national telecasting of such feature events as Monday Night Baseball, the Saturday Game of the Week, the League Championship Series, the All Star Game and the World Series. Under the provisions of Section 111 of the Copyright Revision Act, cable systems are not required to pay a compulsory licensing fee for the retransmission of these nationally distributed games, and we have made no claim for those telecasts.

3. In addition to these national network telecasts, each major league team separately presents local telecasts of its games by licensing the rights directly to television stations; by licensing the rights to sponsors who deal with the stations; or by purchasing air time on local stations and producing their own telecasts. In 1978, the clubs presented a total of 1,414 telecasts over their local "flagship" stations. See Exhibit No. 2 hereto. Many of these same telecasts were also carried by the more than 100 broadcast stations which comprise the clubs' regional networks and which are licensed to the nation's smaller and medium-sized communities. See Exhibit No. 3 hereto. These

telecasts, imported as distant signals, are compensable under Section 111, and accordingly, we have made royalty claims for them. In addition, we have also claimed for "This Week in Baseball" which is a syndicated program consisting primarily of the highlights of the telecasts of our games.

4. It is clear that sports has become a key component of cable programming. CATV systems throughout the country have been able to import a massive amount of distant signal baseball programming, both over conventional microwave transmission and the newer satellite transmission of the so-called "superstations." There are presently four television stations which are on satellite and available for nationwide distribution to CATV systems: WTBS-TV, formerly WTCG-TV (Atlanta, Georgia); WGN-TV (Chicago, Illinois); KTVU-TV (San Francisco, California); and WOR-TV (New York, New York). An important common characteristic of all of these superstations is their heavy concentration of sports programming. Each of these stations is, in fact, the flagship station of one of the major league clubs and televised a great number of baseball games in 1978. See Exhibits 2 and 3 hereto.

5. Moreover, according to data assembled by the Motion Picture Association of America, */ of the 20 stations that were the largest contributors to the 1978 royalty pool, 11 carried baseball and a total of 16 carried some type of professional sports programming. See Exhibit No. 4 hereto. A further analysis of the MPAA data reveals that professional sports flagship stations contributed more than 50% to the 1978 pool.

II. The Value of Baseball and Other Sports Programming From the Standpoint of the Copyright Owner

6. The Copyright Royalty Tribunal has the responsibility for distributing the royalty pool among the copyright owners on a fair and equitable basis. I believe that the Tribunal, in approaching this task, should examine the comparative value of the various claimants' programming and the relative bargaining positions of the parties in order to determine: (1) how cable systems would choose to allocate their programming dollars if they had to negotiate in the marketplace for the purchase of retransmission rights; and (2) what factors would influence the copyright owners in negotiations for the sale of their programming to cable systems.

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*/ The MPAA's data shows the percentage of the total revenue paid by cable systems in the first half of 1978 attributable to each station.

7. Sports programming is a very valuable commodity and cable operators are willing to pay a premium to acquire the right to retransmit sports in contrast to other programming. My testimony, however, does not focus on that issue, but rather on the factors that would influence the copyright owners of sports programming if they were to bargain with cable operators to reach a fair price for their product.

8. In this connection, Baseball and the other sports interests have consistently taken the position that cable retransmission of their programming into any club's home territory can have a significant adverse impact on the very determinants of that club's economic success -- the following of its hometown fans, the size of its gate, and the value of its broadcast rights. This, in turn, affects the competitive stability of the entire league. As the Senate Subcommittee on Patents, Trademarks and Copyrights noted in 1969, when it initially exempted sports programming from the compulsory licensing provisions of the copyright revision legislation:

> "Unrestricted secondary transmissions by CATV of professional sporting events could seriously injure the property rights of professional sporting leagues in televising their live sports broadcasts. Unregulated

> retransmission of live sports events could also have serious consequences on gate attendance, such as major and minor league baseball games."*/

In addition, a 1976 study prepared by the staff of the Communications Subcommittee of the House Committee on Interstate and Foreign Commerce recognized that the impact on sports should be taken into account in any distribution of cable copyright payments. The study stated that:

> "the distribution of the copyright payment [to sports] . . . would have to take into account both the loss to the national or regional sports telecaster and the loss suffered by the local entrepreneur." Subcomm. on Communications of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess., "Cable Television: Promise Versus Regulatory Performance" at 50 n. 46 (1976).

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*/ Subcomm. on Patents, Trademarks and Copyrights of the Senate Judiciary Comm., 91st Cong., 1st Sess., "Draft Report to Accompany S. 543" at 29 (1969). The Subcommittee further noted that, in view of Congress' previous action in enacting the Sports Broadcast Act of 1961, "the transmission of organized professional sporting events by cable systems requires special consideration." Id.

The nature of our concerns with respect to the impact of cable retransmission of our clubs' telecasts is fully detailed and documented in comments we filed with the Federal Communications Commission, Docket Nos. 20988 and 21284, of which the Tribunal can take official notice.

9. If they had been permitted to negotiate with cable systems with respect to the retranmission of their telecasts, our clubs would have taken these two severe economic consequences into consideration. And the price that they would have demanded at the bargaining table would have been significantly influenced by their consideration.

10. With respect to the first factor, the impact of cable on home gate revenue, the ability of any sports team to succeed depends largely upon the size of its home gate. For example, Major League Baseball clubs derive about 75 percent of their total revenues from the sale of tickets and concessions at the ball park. It is particularly noteworthy that most clubs schedule their television programming so as not to compete with their home gate. Clubs generally televise away games, knowing that a televised home game can cut into the gate. Indeed, nearly one third of the clubs televised no home games in 1978. The clubs that televise a large number of home games do so only because particular market characteristics permit it. Only those teams in the two largest markets with old and established franchises (Chicago and New York) have authorized the

telecast of a large number of home games, and they have negotiated significant added compensation for these rights.

11. The clubs are well aware that cable importation of distant signal sports have the potential of dramatically upsetting this broadcast pattern and harming home game attendance. The clubs reflected this concern when they negotiated a contract with UA-Columbia Satellite Service, Inc. for cablecasts of a number of baseball telecasts. In order to avoid harming the home gate, no rights were granted in any of the clubs' home territories.

12. The second important factor that a club would have to consider is cable's potential impact on the value of local television contracts for professional sports contests. A club's broadcast rights are critical to its effective operation. Revenues derived from the sale of both the local and national broadcast rights constitute approximately 25 percent of the clubs' total revenues. These broadcast rights are equally significant as a promotional device which has helped bring fans to large stadia over the course of each club's 81 home games.

13. The saturation of a club's home market with additional baseball telecasts, which are sponsored by

competing advertisers, could fractionalize the viewing audience for the baseball telecast of the flagship station. This fractionalization can occur either because the telecasts compete head-on or because oversaturation decreases viewer interest in each telecast. As with other programming, if fewer people watch the flagship station's telecasts, advertisers will pay less for the right to sponsor the local team's games. Perhaps more importantly from the standpoint of sports interests, advertisers also pay less if they no longer have their bargained-for exclusive rights to sponsor baseball in the club's home territory. These are simple facts of the marketplace. The result is that the value of the club's local telecasts over the long run could decrease.

14. Cable importation of distant signal baseball programming could also dilute the rights which may be licensed to those stations in the clubs' regional networks. This problem is much the same as with flagship stations -- the availability of additional telecasts with competing sponsors can render the broadcast rights less valuable.

15. The point is clear. The potential harm that could be caused by CATV carriage of distant signal baseball

programming to our clubs' traditional sources of revenue would significantly influence the price they would demand at the bargaining table for retransmission rights absent compulsory licensing. As the foregoing discussion shows, the margin of success for any club is related generally to the development of hometown fan loyalty, and specifically to the size of the gate which it can attract and the value of the broadcast rights which it can license. Any action which threatens to undercut these assets threatens the club's very existence.

16. This fact is reflected in the clubs' dealings with local television stations where they negotiate and obtain a fair marketplace price for their product. The clubs, like any other entrepreneur, bargain regarding the amount, distribution and selling price of the product which they have created. In these negotiations, the clubs take into account a variety of considerations, including possible impact on their home attendance and on other teams. As noted above, most teams have steadfastly refused to authorize many telecasts of home games, while several do not telecast any at all.

17. Just as the sports interests would have to assess the harm to the competitive stability of their leagues caused by cable retransmission, and account for that harm in licensing their rights to cable, the Tribunal must also assess and account for that harm. We believe that this marketplace judgment should be a central consideration to the Tribunal in reaching its decision as to the proper distribution of the compulsory licensing fee.

March 24, 1980

STATEMENT OF RON BAIN,
DIRECTOR OF BROADCASTING,
NORTH AMERICAN SOCCER LEAGUE

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of	)
	)
Distribution of Cable	)
Television Royalty Fees	)

STATEMENT OF RON BAIN

My name is Ron Bain and I have been Director of Broadcasting for the North American Soccer League since 1978. I have had an extensive background in television and sports, going back almost a decade; in 1971, I was appointed director of sports for CBS and three years later became director of planning and administration for CBS Sports. In 1975 I took the position of director of development and planning for NBC Sports. Given my background in the broadcasting and sports field, I agree with the position of the Commissioner of Baseball in his statement on the value of sports to cable television.

Based upon a review of the league's and club's files, it appears that during the 1978 season, 22 of the 24 NASL teams telecast games over various stations, as follows:

Team	Station
Orange County Pro Soccer (limited partnership) a/k/a California Surf Anaheim Stadium Post Office Box 4449 Anaheim, CA 92803	KHJ-TV, Los Angeles
Chicago World Soccer, Inc. a/k/a Chicago Sting Suite 1525 333 North Michigan Avenue Chicago, ILL 60601	WGN-TV, Chicago
Caribous of Colorado, Inc. a/k/a Caribous of Colorado 2640 W. 26th Avenue Suite 170-C Denver, CO 80211	KOA-TV, Denver

Dallas Tornado Soccer Club, Inc. a/k/a Dallas Tornado 6116 North Central Expressway Suite 333 Dallas, TX 75206	WFAA-TV, Dallas
Michigan Soccer Limited a/k/a Detroit Express Pontiac Silverdome 1200 Featherstone Road Pontiac, MI 48057	WKBD-TV, Detroit WXON-TV, Detroit
Miami Professional Sports, Ltd. a/k/a Ft. Lauderdale Strikers 5100 North Federal Highway Suite 405 Ft. Lauderdale, FLA 33308	WPBT-TV, Miami WTVJ-TV, Miami WPLG-TV, Miami
Houston Professional Soccer Club, Limited (a limited partnership) a/k/a Houston Hurricane Post Office Box 42999 Suite #569 Houston, TX 77042	KRIV-TV, Houston
Aztec Professional Soccer Club (limited partnership) a/k/a Los Angeles Aztecs 9171 Wilshire Boulevard Los Angeles, CA 90210	KTTV, Los Angeles
Memphis Soccer Club, Inc. a/k/a Memphis Rogues 2200 Union Avenue Memphis, TN 38104	WMC-TV, Memphis
Minnesota Soccer, Inc. a/k/a Minnesota Kicks 7200 France Avenue, South Suite 128 Minneapolis, MN 55435	KSTP-TV, St. Paul
Lipton Professional Soccer, Inc. a/k/a New England Tea Men 34 Mechanic Street Foxboro, MA 02035	WBZ-TV, Boston

Cosmo Soccer Club, Inc. a/k/a New York Cosmos 75 Rockefeller Plaza New York, NY 10019	WNEW-TV, New York WOR-TV, New YOrk
Philadelphia Soccer Associates (limited partnership) Veterans Stadium Broad Street at Pattison Place Philadelphia, PA 19148	WPHL-TV, Philadelphia
Oregon Soccer, Inc. a/k/a Portland Timber 10151 S.W. Barbur Blvd. Suite 101-D Portland, OR 97219	KPTV, Portland
Blue & Gold Limited (limited partnership) a/k/a Rochester Lancers 812 Wilder Building Rochester, NY 14614	WOKR-TV, Rochester
San Diego Professional Soccer Club (limited partnership) a/k/a San Diego Sockers San Diego Stadium 9449 Friars Road San Diego, CA 92108	KTTV, Los Angeles XETV, Tijuana
San Jose Earthquakes, Limited a/k/a San Jose Earthquakes Suite 272 2025 Gateway Place San Jose, CA 95110	KGO-TV, San Francisco
Seattle Professional Soccer Club, Inc. a/k/a Seattle Sounders 300 Metropole Building Seattle, WA 98104	KSTW-TV, Seattle
Tampa Bay Soccer Club, Inc. a/k/a Tampa Bay Rowdies 1311 N. Westshore Boulevard Suite 109 Tampa, FLA 33607	WTOG-TV, St. Petersburg

Tulsa Roughnecks, Limited (limited partnership) a/k/a Tulsa Roughnecks P.O. Box 35190 Tulsa, OK 74135	KTUL-TV, Tulsa
Vancouver Professional Soccer Club, Limited (limited partnership) a/k/a Vancouver Whitecaps Suite 110 885 Dunsmuir Street Vancouver, B.C. Canada V6C 1N5	CHAN-TV, Vancouver
Washington Diplomats Soccer Club, Inc. a/k/a Washington Diplomats RFK Memorial Stadium 22d & E Street, N.E. Washington, DC 20003	WTTG-TV, Washington